

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

FILED

DEC 11 2002

INDIANA UTILITY  
REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF INDIANA )  
BELL TELEPHONE COMPANY, INCORPORATED, )  
D/B/A AMERITECH INDIANA PURSUANT TO )  
I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS )  
FOR COMMISSION REVIEW OF VARIOUS )  
SUBMISSIONS OF AMERITECH INDIANA TO )  
SHOW COMPLIANCE WITH SECTION 271(C) OF )  
THE TELECOMMUNICATIONS ACT OF 1996 )

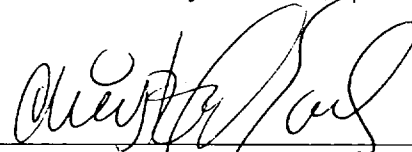
CAUSE NO. 41657

**AFFIDAVITS IN SUPPORT OF INITIAL COMMENTS OF FBN INDIANA, INC.**

Intervenor F.B.N. Indiana, Inc., by counsel, submits the attached affidavits of Dennis L. Ricca and Mark Taylor in support of its Initial Comments filed concurrently herewith.

Respectfully Submitted,

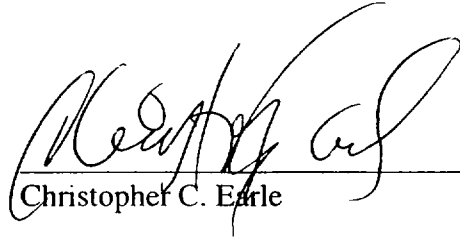
Bose McKinney & Evans, LLP



Christopher C. Earle  
BOSE McKINNEY & EVANS  
First Indiana Plaza, Suite 2700  
135 North Pennsylvania Street  
Indianapolis, Indiana 46204  
317-684-5130  
317-223-0130 (Fax)  
[cearle@boselaw.com](mailto:cearle@boselaw.com)

### **CERTIFICATE OF SERVICE**

The undersigned certifies that on this 11th day of December, 2002, a copy of the following was posted on the LISTSERV maintained in this proceeding in accordance with the agreement of the Parties and the Commission's process Order.



Christopher C. Earle

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE PETITION OF INDIANA )  
BELL TELEPHONE COMPANY, INCORPORATED, )  
D/B/A AMERITECH INDIANA PURSUANT TO )  
I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS ) CAUSE NO. 41657  
FOR COMMISSION REVIEW OF VARIOUS )  
SUBMISSIONS OF AMERITECH INDIANA TO )  
SHOW COMPLIANCE WITH SECTION 271(c) OF )  
THE TELECOMMUNICATIONS ACT OF 1996 )**

**AFFIDAVIT OF DENNIS L. RICCA**

Dennis L. Ricca affirms under the penalties for perjury as follows:

1. I am self-employed as a telecommunications regulatory consultant. Since September of 2000 I have been retained by F.B.N. Indiana, Inc. ("FBN"), a competitive local exchange carrier ("CLEC") authorized by the Indiana Utility Regulatory Commission ("IURC") to provide competitive local exchange services throughout the state of Indiana, to assist in negotiating an interconnection agreement and to use that agreement to implement interconnections for FBN. My business address is 2312 Mekan Drive, Naperville, Illinois 60564-9512. I am over the age of 18 years, and have personal knowledge of the facts set forth herein.

2. As a consultant retained by FBN I have been involved since June, 2001 in all aspects of seeking an interconnection for FBN with Ameritech in Crown Point, Indiana. After an initial proposal was agreed to by the parties in July, 2001, FBN proposed a different architecture for the interconnection that should have saved both FBN and Ameritech a substantial amount of money compared to the previously agreed upon architecture. The proposal was different than ones used by other CLECs in the state, because it utilized the existing facilities between SBC Ameritech and another ILEC, Northwestern Indiana Telephone Company, Inc. ("NITCO"). NITCO is an

affiliate of FBN by virtue of common ownership. Despite the different appearance, a straight-forward reading of Sections 3.2.2 and 3.2.3 of the Interconnection Agreement between FBN and Ameritech described the interconnection perfectly as a mid-span meet. While the proposal was clearly anticipated by the plain language of the Interconnection Agreement, SBC Ameritech refused to complete the requested interconnection.

3. Because Ameritech refused to provide the requested interconnection, FBN filed two Complaints under the Commission's Rocket Docket rules. Attached to this affidavit as Exhibit A is a true and accurate copy of the Commission's Order in those consolidated proceedings.

4. The architecture proposed by FBN would have saved Ameritech and FBN a substantial amount of money.

5. As of the date of this Affidavit, 470 days have elapsed since the RD-01 interconnection was first proposed to Ameritech. Ameritech has not paid reciprocal compensation to F.B.N. for 320 days (ie: 470 days less the very conservative 150 day average implementation period under the FBN/Ameritech interconnection agreement.)

6. During the course of the two Rocket Docket proceedings initiated by FBN to enforce its right to the requested interconnections, Ameritech answered data requests and inquiries during the negotiations process in misleading and less than honest ways. For example, SBC's witness attempted to explain that the interconnection as proposed by FBN was not technically feasible, even though Ameritech had admitted to its technical feasibility in discovery. The same witness testified orally that the parties never discussed a different location for interconnection even though Ameritech had specifically looked into the availability of an alternative interconnection location and reported via email that no spare fiber existed at an alternative location.

That concludes this affidavit.

I affirm under the penalties for perjury that the facts set forth in this Affidavit are true and correct to the best of my knowledge and belief, except for those facts stated upon belief, which facts I believe to be true.

Dated this 11<sup>th</sup> day of December, 2002.



Dennis L Ricca  
Consultant for FBN Indiana, Inc.

County of Will

) ss

State of Illinois )

Subscribed and sworn before me this 11<sup>th</sup> day of December, 2002.

Manju Puniani  
Notary Public

My Commission expires 12-30-02



Exhibit A

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

*[Handwritten signature]*  
Jue  
WBL

COMPLAINT OF FBN-INDIANA, INC. )  
PURSUANT TO 170 IAC 7-7 FOR )  
EXPEDITED REVIEW OF A DISPUTE )  
WITH INDIANA BELL TELEPHONE )  
COMPANY, INC. d/b/a AMERITECH )  
INDIANA CONCERNING ITS FAILURE )  
TO INTERCONNECT WITH FBN UNDER )  
A COMMISSION APPROVED )  
INTERCONNECTION AGREEMENT. )

CAUSE NO. 42001-INT-01-RD-01

COMPLAINT OF FBN-INDIANA, INC. )  
PURSUANT TO 170 IAC 7-7 FOR )  
EXPEDITED REVIEW OF A DISPUTE )  
WITH INDIANA BELL TELEPHONE )  
COMPANY, INC. d/b/a AMERITECH )  
INDIANA CONCERNING ITS FAILURE )  
TO INTERCONNECT WITH FBN UNDER )  
A COMMISSION APPROVED )  
INTERCONNECTION AGREEMENT. )

CAUSE NO. 42001-INT-01-RD-02

APPROVED: OCT 16 2002

RESPONDENT: INDIANA BELL TELEPHONE COMPANY, INC.  
d/b/a AMERITECH INDIANA

**BY THE COMMISSION:**

David E. Ziegner, Commissioner

Carol S. Comer, Administrative Law Judge

On May 13, 2002, FBN-Indiana, Inc. ("FBN" or "Complainant") filed its Complaint against Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana ("Ameritech" or "Respondent") in Cause No. 40572-INT-22-RD-01 pursuant to the Commission's Expedited Procedure for Resolving Interconnection Disputes under 170 IAC §7-7-1, *et seq.* In that Complaint, FBN sought a final order requiring Ameritech to interconnect with FBN by mid-span interconnection in Palmer, Indiana, using existing facilities between Ameritech and FBN's affiliate, Northwestern Indiana Telephone Company, Inc. ("NITCO"). The Complaint alleged that the dispute arose under an interconnect agreement between the parties approved by this Commission in Cause Number 41268-INT-09.

Subsequent to the parties' interconnection negotiations, but prior to the date that FBN filed its Complaint, the Commission approved a new interconnect agreement between the parties in a cause docketed as Cause Number 42001-INT-01. By Order dated June 19, 2002, the Commission found that the interconnection agreement cited by FBN in 40572-INT-22-RD-01

had been superceded by the interconnection agreement approved by the Commission in 42001-INT-01 (the "Agreement"). On that basis, the Commission dismissed the May 13, 2002, Complaint and instructed FBN to re-file its Petition under the current and controlling interconnection agreement if it wished to proceed with its claims. Pursuant to that June 19, 2002 Order, FBN re-filed its Complaint, docketed as 42001-INT-01 RD 01 on June 21, 2002, citing sections 3.2.2 and 3.2.3 of the Agreement (the "RD-01" Complaint). Complainant also alleged that Ameritech had failed to negotiate in good faith as required by section 28 of the Agreement. The Presiding Officers issued a procedural schedule in this matter on June 27, 2002.

On July 19, 2002, FBN filed a second Complaint, docketed as 42001-INT-01 RD 02 (the "RD-02" Complaint). The July 19, 2002 Complaint also sought a final order requiring Ameritech to interconnect with FBN using a mid-span interconnection in Palmer, Indiana, and also cited sections 3.2.2 and 3.2.3 of the Agreement, but the proposed interconnection was to employ new facilities and under a new architecture rather than existing facilities. The Presiding Officers issued a docket entry setting forth a schedule and addressing other procedural matters in the RD-02 matter on July 26, 2002.

On August 2, 2002, Ameritech filed its *Motion to Consolidate Proceedings*. On August 5, 2002, FBN filed its opposition to the motion to consolidate proceedings. By a August 15, 2002 docket entry, the Presiding Officers granted consolidation of these proceedings and ruled that the consolidated proceedings should be governed by the schedule established by the July 26, 2002 docket entry issued in the RD-02 proceeding.

On August 30, 2002, AT&T Communications of Indiana GP on behalf of itself and its affiliate, TCG Indianapolis (together "AT&T"), filed a *Motion for Leave to File Petition to Intervene* and its *Petition to Intervene* pursuant to 170 IAC 7-7-10(b)(8). On September 3, 2002, McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") filed a similar *Motion for Leave to File Petition to Intervene* and its associated *Petition to Intervene*. The *Motions to Intervene* were granted in a docket entry issued on September 5, 2002.

All parties except McLeodUSA<sup>1</sup> filed evidence and exhibits consistent with the Commission's procedural schedule, and an Evidentiary Hearing was conducted on September 17, 2002 in Room E-306 of the Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana. No members of the general public were present at the evidentiary hearing.

At the hearing, the Presiding Officers questioned witnesses for Complainant and Respondent. The Presiding Officers also requested that Complainant late-file information concerning the transaction by which its current shareholders obtained ownership of the company. On September 23, 2002, Complainant filed a *Request for Confidential Treatment* of certain financial information contained in its late-filed Exhibit 4 that was to be filed in response to the Commission's request during the hearing. The Commission made a preliminary finding of confidentiality in its docket entry issued on September 24, 2002, and the late-filed exhibit was submitted under seal on that date, with redacted copies filed with the Commission.

---

<sup>1</sup> By Petition McLeodUSA sought leave to join and sponsor AT&T's Direct and Reply testimony in this proceeding.

Pursuant to a Request for Time, the Complainant and Respondent timely filed their proposed orders on September 26, 2002 and on October 1, 2002, Complainant, Respondent and Intervenor, AT&T, filed their Responses and Exceptions to the Proposed Orders.

The hearing was continued until October 7, 2002, and the September 17, 2002 hearing was incorporated into the record. No member of the general public appeared. Proofs of publication of the notice of the evidentiary hearing in accordance with the requirements of 170 IAC 7-7 and 170 IAC 1.1-15 have been incorporated into the record and placed in the official files of the Commission.

1. **Notice and Jurisdiction.** Due, legal and timely notice of the public hearing conducted herein was published by the Commission as required by law. Complainant and Ameritech are both "telephone companies" and "public utilities" as those terms are defined by Indiana law and hold certification from the Commission to provide telecommunications services. Complainant seeks an order from the Commission requiring interconnection pursuant to a Commission-approved interconnection agreement and applicable law including rules promulgated by the Commission. The Commission therefore has jurisdiction over both the parties and the subject of this proceeding.

2. **The Parties.** FBN is an Indiana corporation with its principal offices located at 301 North Washington Street, P.O. Box 461, Hebron, Indiana. FBN is a telecommunications carrier authorized to provide facilities-based local exchange service throughout the state of Indiana. FBN is a Competitive Local Exchange Carrier ("CLEC") affiliated with the Incumbent Local Exchange Carrier ("ILEC"), NITCO, by virtue of common ownership.

Ameritech is an Indiana corporation with its principal offices located at 240 North Meridian Street, Indianapolis, Indiana. Ameritech provides various telecommunications services to the public within its certified territory in Indiana. Ameritech is a subsidiary of Ameritech Corporation, a Delaware corporation, with its corporate headquarters in Chicago, Illinois. Ameritech Corporation merged with SBC Communications in October 1999.

3. **Confidentiality.** By docket entry on September 12, 2002, the Presiding Officers granted preliminary confidential treatment to Ameritech's network diagrams describing the manner in which Ameritech interconnects with AT&T in certain LATAs. At the September 17, 2002 hearing, AT&T indicated that it did not consider such materials to be confidential and did not object to public-dissemination of the material. Ameritech's Exhibit shall accordingly be treated as public information available for review in the file of this proceeding.

By docket entry on September 24, 2002, the Presiding Officers also granted preliminary confidential treatment for Complainant's late-filed Exhibit 4. Upon review, the Commission now finds that the information submitted by Complainant under seal should be granted on a permanent basis consistent with the provisions of Ind. Code § 8-1-2-29 and Ind. Code § 5-14-3-4 because Complainant takes reasonable precautions to protect that information, the information contained therein is not readily available to the public, and because other parties could derive independent economic value from that information to the detriment of FBN. That Exhibit shall accordingly be protected from public disclosure as confidential.



4. **Relief Requested.** FBN requests that the Commission order Ameritech to interconnect with FBN in Palmer, Indiana in the manner requested in both RD-01 and RD-02 within fifteen (15) days of the Final Order.

In RD-01, FBN seeks interconnection with Ameritech at an OC-12 transmission rate over unused facilities already in existence that were originally constructed for the passage of traffic between Ameritech and NITCO. The two networks are interconnected through a fiber splice in Palmer, Indiana, and FBN has arranged to purchase a spare OC-12 from NITCO at NITCO's tariff rate in order to deliver traffic between NITCO's switch to Palmer.

In RD-02, FBN seeks interconnection at the same location in Palmer Indiana where Ameritech interconnects with NITCO, but requests that Ameritech interconnect with a new fiber facility to be installed between Palmer and FBN's switch in Hebron, Indiana.

In the Parties' *Report on Settlement Conference* filed with the Commission on August 29, 2002, the Parties framed the issues in dispute as follows:

**Issue 1:** Does the Agreement require Ameritech Indiana to provide FBN a mid-span meet at the Palmer, Indiana location utilizing fiber connectivity, or does the Agreement require that use of fiber meet interconnection architecture be deployed only at locations and through methods mutually agreed to by the parties?

**Issue 2:** If the Agreement provides for the interconnection proposed by FBN under Issue 1, is Ameritech required to provide the hand-off at the mid-span meet at any transmission rate for a Telecommunications Service that SBC-Ameritech provides for itself, its subsidiaries, its Affiliates or other persons?

In addition to the two issues set forth in the *Report on Settlement Conference*, the Complainant identified a third issue to be addressed:

**Issue 3:** Does the Agreement require FBN to pay Ameritech Indiana for transport within Ameritech Indiana's network for calls originating on Ameritech Indiana's network?

5. **Applicable Law.** The disputes in this consolidated proceeding are governed by Ind. Code § 8-1-2 *et. seq.*, § 251(c)(2) of the Telecommunications Act of 1996 (the "Act"), and the interconnection agreement between FBN and Ameritech Indiana approved by this commission in Cause No. 42001-INT-01, which became effective on April 26, 2002. The Agreement between Ameritech and FBN is the product of an arbitration between FBN and Ameritech resulting in the Commission's approval of an *Arbitration Order* on February 6, 2002 and a *Supplemental Order* approved on June 12, 2002. None of the provisions that were the subject of that arbitration proceeding are implicated in this cause. The balance of the Agreement was adopted by FBN from the interconnection agreement between AT&T and Ameritech (the

"AT&T Agreement") pursuant to § 252(i) of the Act. The AT&T Agreement was approved by the Commission in a series of Orders in Cause No. 40571-INT-03, the last of which was approved on August 15, 2001 (the "AT&T Arbitration Order").

**6. Complainant and Intervenor's Evidence.** FBN presented the Direct Testimony and Exhibits of Mark Taylor, President of FBN (*FBN Exhibit 1*, Tabs A through E, Demonstrative Exhibits 1-5), and Dennis Ricca, a consultant retained by FBN who has been involved in the negotiations surrounding the interconnections in RD-01 and RD-02 (*FBN Exhibit 1*, Tabs F through O). Mr. Taylor stated that mid-span meets similar to those proposed by FBN in both RD-01 and RD-02 are "extraordinarily common" in the context of ILEC to ILEC interconnections. *FBN Exhibit 1*, Tab A, at 5. He explained that the RD-01 proposal will utilize the facilities that currently connect the Ameritech and NITCO ILEC networks via a mid-span meet in Palmer, Indiana. *Id.*, at 6. FBN proposes to lease the Palmer-to-Hebron portion of this facility from NITCO which is willing to lease this capacity to FBN. *Id.*, at 8-10.

Mr. Taylor explained he understood sections 3.2.2 and 3.2.3 of the Agreement to clearly require the interconnections in both RD-01 and RD-02. *Id.*, at 21-22. Mr. Ricca agreed, and explained that each interconnection comports with the language of Sections 3.2.2 and 3.2.3 of the Agreement. Mr. Ricca explained that the RD-01 interconnection is not only technically feasible, it currently exists on the same fiber facility for an interconnection Ameritech has extended to an "other person" within the meaning of the Agreement and that the requested interconnection is located at the same interconnection point and requested at the same OC-12 transmission rate provided in the existing connection to NITCO." *FBN Exhibit 1*, Tab F, at 11. Ricca testified that the RD-02 Interconnection was also technically feasible and available to FBN as it had been offered to another carrier. *Id.*, at 12-13. Ricca noted that the technical feasibility in both RD-01 and RD-02 was admitted by Ameritech either via a data request response (RD-01, See Corrected FBN Exhibit 1) or stipulation (RD-02). *Id.*, at 11 and 13.

Both Mr. Taylor and Mr. Ricca testified that FBN's Issue 3 was and continues to be a source of disagreement between the parties. *FBN Exhibit 1*, Tab F at 17-20, 30-33 and 41. FBN's witnesses claimed that Ameritech injected it as an issue, at least in RD-01, by attempting to force FBN to accede to its demands to pay for interconnection trunking or DEOT transport that the Agreement imposes only on Ameritech. Mr. Ricca sponsored a letter and an email from Ameritech along with a summary of a September 14<sup>th</sup>, 2001 conference call in support of this contention. *FBN Exhibit 1*, Tab N, Tab M, pages 10-13.

Finally, FBN's witnesses alleged Ameritech acted in bad faith by failing to fulfill the obligations imposed upon Ameritech by the Commission-approved Agreement between them.

Intervener AT&T presented testimony of Danial M. Noorani. Mr. Noorani is District Manager – Carrier Relations for AT&T with responsibilities for AT&T's business relationships with Ameritech on collocation, structures, 911 and other network interconnection issues. Mr. Noorani was specifically involved in negotiating the interconnection and collocation sections of the Agreement at issue in this proceeding. Mr. Noorani testified that the interconnection requested by FBN is a technically feasible mid-span meet and that Ameritech's refusal to provide this means of interconnection violates the Agreement. *AT&T Exhibit DMN*, at 3 and 5. Mr.

Noorani further testified that Ameritech's attempts to require mutual agreement under Section 3.8 of the Agreement was "an unreasonably expansive interpretation and application of Section 3.8." *Id.* at 5. He expressed concern that Ameritech "is using the 'mutually agreeable' language as unilateral veto power over interconnection requests from competitive carriers." *Id.* at 6. He also testified that FBN is not required to propose more than one method of interconnection under the Agreement. *Id.*

Mr. Noorani concluded that sections 3.2.2 and 3.2.3 of the Agreement require Ameritech to make the Palmer interconnections requested by FBN. He explained that section 3.8 was inapplicable to FBN's requested interconnections because 1) interconnection has already been offered to another party; 2) requiring "mutual agreement" would render the "at its option" language in Sections 3.2.2 and 3.2.3 meaningless, and 3) the network decisions that might otherwise have to be made under Section 3.8 are moot under the present circumstances because the facilities already exist. *Id.*

7. **Ameritech's Evidence.** Ameritech Indiana provided evidence through the Responsive Testimony of Marc Novack (Respondent's Exhibit MN). Ameritech Witness Novack opined that Section 3.8 of the interconnection agreement, rather than Section 3.2 governs the architecture requested by FBN in its Complaints. Respondent's Exhibit MN, pp. 5-7. Ameritech argued that Section 3.8 of the interconnection agreement contains language governing the placement of a "Fiber Meet" between the parties and makes clear that a "Fiber Meet Interconnection between SBC-Ameritech and [FBN] can occur at any mutually agreeable and technically feasible point between [FBN's] premises and an SBC-Ameritech Tandem or End Office..." Thus, Witness Novack asserted that the interconnection agreement contemplates that given the greater expense of deploying fiber optic cable, the selection of the point of interconnection between the parties for a fiber meet must always be by mutual agreement. Ameritech witness Novack also pointed out that there is no dispute in either Complaint RD-01 or RD-02 that FBN seeks to interconnect utilizing the fiber meet architecture contemplated in Section 3.8 of the agreement, *i.e.* FBN has requested interconnections utilizing fiber optic cable facilities and a joint SONET transmission system utilizing a fiber meet point. *Id.* at 6.

Ameritech's witness also asserted that FBN's requests in both Complaint RD-01 and RD-02 was costly to Ameritech. *Id.* at 4. Ameritech argued that it would cost \$328,700 to implement the requested fiber meet described in Complaint RD-01. Witness Novack asserted that the current hand-off deployed at the mutual agreement of NITCO and Ameritech Indiana is in an electrical format therefore, Ameritech would need to substantially reconfigure the existing facilities in its Crown Point tandem switch and Palmer point of interconnection to accommodate FBN's demand for an optical hand-off of traffic. *Id.*

In response to questions from the Presiding Officers at the hearing, Ameritech argued that the only way to achieve a fiber meet interconnection utilizing the existing facilities as requested by FBN would require the additional investment in equipment itemized by Ameritech Indiana witness Novack and totaling \$328,700 or NITCO could make the necessary changes to its end of the Ameritech Indiana – NITCO fiber meet. Respondent's Exhibit MN, p. 4.

With respect to Complaint RD-02, Ameritech Indiana argued that the total cost of the requested fiber meet architecture would be \$536,700. *Id.* at 4. This total, Ameritech explained, included the itemized costs applicable to Complaint RD-01 combined with the additional expense of \$220,000 generated by the construction of approximately 7.9 miles of fiber optic cable. *Id.* at 4. Witness Novack also argued that FBN has requested an interconnection that would supply far more capacity than what has been forecasted by FBN. *Id.* at 4 and 5.

Witness Novack further claimed that the manner in which FBN requests interconnection is not typical of other CLEC's interconnecting in Indiana or elsewhere in SBC's 13-state territory. Novack claimed that CLEC/Intervenors AT&T and McLeod deploy significant infrastructure within Ameritech's territory and interconnect at each Ameritech tandem switch typically deployed in suburban or urban areas like Crown Point and Gary. Respondent's Exhibit MN, pp. 34-35; FBN, on the other hand, Ameritech argued, proposes interconnection at an extremely rural location near the border of Ameritech and NITCO's territory nearly 8 miles from the Ameritech Tandem in Crown Point. *Id.* at 11. Mr. Novack did, however, offer, as a "good faith proposal to move FBN's interconnection efforts forward" that Ameritech would provide FBN an interconnection of the same type provided to AT&T or McLeod. *Id.* at 35.

Mr. Novack testified that FBN proposes only to receive calls from Ameritech Indiana customers and does not indicate, through its forecasts or testimony that it will send traffic to Ameritech Indiana. *Id.* at 15-16. Thus, Ameritech argued, it has no hope of ever recovering the expense of the proposed interconnection under RD-01 or RD-02. Due to the one-way nature of the traffic, Ameritech will only pay reciprocal compensation to FBN and will never receive reciprocal compensation from FBN. *Id.* Further, witness Novack explained that Ameritech would be compelled to transport FBN's local calls across rate centers without sufficient compensation. *Id.* at 13 and 18.

Witness Novack testified that Ameritech has acted in good faith in its attempts to negotiate the interconnection and opined that Ameritech's attempts to interconnect with FBN have been hampered by the lack of critical information concerning the engineering systems design. *Id.* at 14. Specifically, Mr. Novack alleged that FBN has failed to provide Point of Presence (POP) or Point of Interconnection (POI) Common Language Location Identifier (CLLI) codes to properly identify the proposed network architecture. *Id.* Ameritech alleged that the current information supplied by FBN locates these interconnection points at locations outside of Ameritech's territory.

#### **8. Complainants' and Intervenor's Rebuttal Evidence.**

FBN submitted rebuttal testimony from Mr. Ricca (*FBN Exhibit 2*, Tabs P and Q), Mr. Taylor (*FBN Exhibit 2*, Tab R), and from Mr. Edward Smith, a NITCO Network Supervisor (*FBN Exhibit 2*, Tab S). Mr. Ricca asserted that Mr. Novack's testimony repeatedly raised issues lost by Ameritech in the *AT&T Arbitration*. First, he noted that Ameritech had not only lost the issue of the expense of interconnections in the *AT&T Arbitration*, but Mr. Smith's rebuttal testimony also demonstrated that Mr. Novack's cost estimate of \$328,700 was overstated by some \$300,000. *Id.*, at 8-12, 15-18, 29, 39. Second, Mr. Ricca explained that Ameritech had invoked the mutual agreement language of Section 3.8 even though the Commission had rejected

Ameritech's efforts to insert such language into Sections 3.2.2 during the *AT&T Arbitration*. Mr. Ricca noted that even if the Commission had not previously ruled on this issue, Ameritech's position in this proceeding would render meaningless the "at-its-option" language of Sections 3.2.2 and 3.2.3. Finally, Mr. Ricca testified that Ameritech's assertion that the Agreement does not contemplate one-way traffic was lost in the *AT&T Arbitration*, and that Mr. Novack had misconstrued section 3.1, and ignored section 4.3.1's lead sentence that states "[e]ach Party shall provision and maintain their own one (1)-way trunks to deliver calls originating on their own network and routed to the other party's network." *Id.*, at 12-15, 30-31.

Mr. Ricca testified that the Agreement requires that for traffic originating on Ameritech's network, the point of interconnection ("POP") must be located at FBN's switching office in Hebron. Mr. Ricca argued that Section 3.2.1 of the Agreement would allow FBN to have insisted on interconnection at the top of its network, but opined Palmer is a technically feasible point on Ameritech's network at which another interconnection is made for another person. He also agreed with Mr. Noorani that none of the network decisions requiring mutual agreement of the parties in Section 3.8 have any meaning in this instance since those decisions have been made and implemented at the Palmer meet between Ameritech and NITCO. *Id.* at 23-25.

Mr. Ricca testified that Mr. Novack's claim that FBN's requested optical hand-off was inconsistent with the DS-1 or DS-3 electrical hand-off used in the NITCO/ Ameritech interconnection was misleading. He stated that as long as the RD-01 DS-1 trunks from SBC to FBN are on the same OC-12 reserved exclusively for FBN's use, then the issues of hand-off are irrelevant. *Id.* at 21. Mr. Ricca stated that the total demand for interconnection trunks made by Mr. Novack was 8,064 and not the 16,126 cited by Mr. Novak. Finally, Mr. Ricca testified that FBN was not seeking excessive interconnection capacity because it is only one large customer away from exhausting even the entire OC-12 it proposes. *Id.* at 21-22, 29-30.

Mr. Ricca also disputed Mr. Novack's claim that mid-span fiber meets are more expensive to augment than other methods. He explained that fiber is seldom buried with only four strands, but rather fiber is ordinarily run in 12, 24, or 48 fiber strands in a single fiber cable, so there would necessarily be spares with which to provide any needed augments. He also explained that most companies augment depleted spans by upgrading the electronics to provide four times the capacity. His testimony is consistent with testimony from Ameritech that the Ameritech/NITCO interconnection had been upgraded from an OC-12 to an OC-48. *Id.*, at 26, 39; *see also FBN Exhibit 1*, Tab F, at 21-22. Finally, Mr. Ricca rejected Mr. Novack's offer to provide the RD-01 interconnection over the three existing OC-12s as another attempt by SBC to dictate FBN's interconnection and network architecture while loading inefficiencies and needless costs on FBN in the process. Citing Mr. Smith's rebuttal testimony, he explained only if an OC-12 is reserved solely for FBN will the interconnection work in the most efficient manner. *Id.*, at 21, 33, 39.

Mark Taylor categorized Mr. Novack's testimony into "themes" he contended had been recurrent throughout lengthy negotiations for the Crown Point interconnection. The themes he described were: 1) that FBN's requests were unfair to Ameritech, 2) that FBN's requests were excessively costly to Ameritech, 3) that FBN's requests were inconsistent with the way other CLEC interconnections are accomplished, 4) that Ameritech could treat FBN differently than it

treats ILECs because FBN is a CLEC, and, 5) that FBN employs inconsistent, incompetent, and difficult people who do not know what they are doing with whom SBC has dealt patiently and fairly. Mr. Taylor dismissed these as themes irrelevant to both the negotiations and these proceedings. *FBN Exhibit 2, Tab T, at 3-4.*

Mr. Taylor also accepted Ameritech's offer to interconnect in the manner it interconnects with AT&T on the condition that the interconnection would be implemented in a timely manner. Mr. Taylor explained that FBN would expect Ameritech to provision and maintain all of the trunks from Ameritech's Crown Point tandem to FBN's Hebron switch location if an interconnection like that provided to AT&T were to be provided to resolve this proceeding.

Mr. Edward Smith, Network Supervisor for NITCO, also filed Rebuttal Testimony in response to a subpoena from FBN. Mr. Smith disagreed with Mr. Novack's testimony that the Titan 5500 Digital Cross-Connect is necessary for either the RD-01 or the RD-02 interconnections. He testified that the existing OC-48 connecting NITCO and Ameritech has three OC-12s that were provisioned and functioning before Ameritech acquired the Titan 5500 digital cross-connect in its Crown Point central office. He testified that common sense dictates that a fourth OC-12 could be added to the existing facility without the need for a Titan 5500 digital cross-connect as well. Mr. Smith also testified that he received a quote from one of NITCO's vendors showing the cost of the OC-12 drop port and the FLM 600 with four OC-3 drops at a total of \$22,000, significantly less than the \$40,000 shown in Mr. Novack's Testimony *Id.*, at 4-5.

Mr. Smith testified that if Ameritech were permitted to hand-off traffic to FBN on DS-1s scattered all over the existing OC-12s, NITCO would be required to invest in unnecessary electronics and endure needless operational inefficiencies. He explained that if Ameritech simply sent all of the DS-1s or DS-3s to FBN on the existing spare OC-12, NITCO could simply send the OC-12 signal it receives from Ameritech onto fiber connecting the NITCO and FBN offices. *Id.*, at 6.

Mr. Smith also provided details of the current configuration of the OC-48 hardware and the implications of that configuration to show that through two straight-forward re-configurations of the existing electronics at each end of the OC-48, the total capacity available could be increased from the currently available 12,096 DS-0s to 30,240 DS-0s. By way of comparison, Smith notes that NITCO's current usage is 5,280 DS-0s and its usage has decreased in the last two years by four DS-3s (or 2,688 DS-0s). *Id.*, at 8-22. Mr. Smith also testified that another interconnection exists in Palmer, Indiana between Ameritech's network and AT&T. *Id.*, at 23.

Mr. Smith estimated in his testimony that implementation of the physical interconnection requested by FBN in RD-01 would take four to six hours, assuming availability of necessary parts. He explained that the establishment of trunk groups and testing might take several days to a week longer. He testified it would take NITCO a similar amount of time to provide for the transport of traffic on Ameritech's behalf from Palmer to NITCO's switch with four to six DS-3s and possibly an OC-3 riding an OC-12 as proposed by Mr. Novack. *Id.*

Danial M. Noorani filed rebuttal testimony on behalf of AT&T. Mr. Noorani disagreed with Mr. Novack's interpretations of various portions of Article III of the Agreement based on his direct experience in the negotiations of those provisions with Ameritech. *AT&T Exhibit DMN-R*, Q&A 1-4. Mr. Noorani explained that at the contract conformance stage of the *AT&T Arbitration*, Ameritech attempted to insert new language requiring "mutual agreement" under Sections 3.2.2 and 3.2.3 in Issue 4 after it had lost the issue earlier in the arbitration and that the Commission specifically rejected Ameritech's language. Mr. Noorani testified that in his experience, Ameritech had abused similar language in the past to veto every proposal that AT&T made for interconnection. *Id.*, Q&A 5.

Mr. Noorani was also critical of Mr. Novack's interpretation of Section 3.2.1 of the Agreement as requiring interconnection only at Ameritech's tandems. He argued that both the Act and the Agreement allow for FBN interconnection at any technically feasible point in Ameritech's network, not solely at Ameritech's tandem. *Id.* Q&A 6. Mr. Noorani also disputed Mr. Novack's assertion that FBN's proposals were unfair because they anticipate calls flowing only in one direction. He asserted that 1) the Agreement anticipates one-way traffic, 2) that one-way payments of reciprocal compensation are specifically allowed under the Agreement, and 3) that Section 4.3.1 requires one-way trunks. He also noted that Ameritech had lost its bid to have ISP traffic treated as non-local.

Mr. Noorani's testimony addressed Mr. Novack's offer to interconnect with FBN in the same way that AT&T interconnects with Ameritech. He explained if FBN were to interconnect with Ameritech in the same manner AT&T does, Ameritech would be required to transport traffic originated on its network all of the way to FBN's switching office and that FBN would not be required to build to each of SBC Ameritech's tandem offices until traffic was expected to flow in that direction. *Id.*, Q&A 9. Mr. Noorani clarified that the network diagrams submitted by Ameritech correctly depict the manner of interconnection employed by AT&T, though he explained that they would have more accurately included arrows to show traffic directionality. He agreed that the explanations on the diagrams demonstrate that Ameritech is responsible for the trunks that deliver traffic originating on Ameritech's network to AT&T's switching center at the top of AT&T's network.

Finally, Mr. Noorani disputed Mr. Novack's parity argument and explained that he is unaware of any part of the Act, the FCC's rules, or the Commission's rules that require a CLEC to interconnect in the same way as every other CLEC. He also disagreed with Mr. Novack's distinction between ILEC and CLEC facilities, and saw no issue with using spare capacity on the Ameritech/NITCO OC-48 facility. He testified that AT&T and Ameritech do this all of the time and that it is frequently Ameritech that uses the AT&T copper facilities originally installed for delivery of long distance traffic to AT&T for local interconnection. *Id.*, Q&A 13.

9. **Discussion and Findings.**

A. **The Interconnections Sought by FBN are Technically Feasible and No Basis Exists on which to Discriminate between Interconnections Sought by CLECs and Interconnections Sought by ILECs.**

The Interconnect Agreement between FBN and Ameritech and the Telecommunications Act itself require that the interconnection sought by FBN must be technically feasible. The burden is upon Ameritech in this proceeding to demonstrate that the points of interconnection proposed in this proceeding are not technically feasible.<sup>2</sup> The Parties stipulated that the RD-02 interconnection is technically feasible. *Report on Settlement Conference*, ¶9. Ameritech also admitted the technical feasibility of RD-01 in its discovery responses. *FBN Exhibit 1, Tab I*.<sup>3</sup> We note that while Mr. Novack testified that the electronics on Ameritech's end of the facilities are incompatible with the proposed OC-12 interconnection FBN seeks, it is clear that three OC-12 facilities are functioning at this time for NITCO. It is also clear from Mr. Smith's rebuttal testimony that the equipment NITCO would use to provision the remaining OC-12 is fully capable of compatibility with Ameritech's electronics. Further, in response to Commission questions at the evidentiary hearing, Mr. Novack admitted that the interconnection FBN seeks in RD-01 is technically feasible despite the use of a different technology than assumed by FBN. We accordingly find that both the RD-01 and RD-02 interconnections are technically feasible.

As a related matter, we address Ameritech's argument that, even though the interconnections are technically feasible, FBN, as a CLEC, is not entitled to the same physical interconnection offered to NITCO, as an ILEC. We reject such a distinction here. The Interconnect Agreement and the Act itself allow a CLEC to request any interconnection that has been provided to the ILEC "itself, its subsidiaries, its Affiliates or other persons." Mr. Novack's testimony attempts to draw a distinction between "ILEC-to-ILEC" facilities and facilities originally engineered to accommodate CLEC interconnection. However, neither the Agreement nor the Act distinguishes between ILEC-to-ILEC and ILEC-to-CLEC facilities for purposes of interconnection. Indeed, such a distinction would be incompatible with the Act's requirement of non-discrimination because it would provide neighboring ILECs with a strong incentive to provide interconnection to one another on more favorable terms than made available to the CLECs with which they directly compete. NITCO is undeniably an "other person" as contemplated in the Act and in the Agreement and, therefore, FBN is entitled to request from Ameritech the same interconnection it provided to NITCO.

B. **Cost, Cost Recovery and Reciprocal Compensation.**

The bulk of Ameritech's arguments focused on the costs to Ameritech to accomplish the interconnections requested by FBN. This objection is also without merit. First, we are not

---

<sup>2</sup> *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-325 (August 8, 1996), ¶¶ 198, 205.

<sup>3</sup> "Request 1-18: Please admit or deny that the OC-12 interconnection proposed by FBN in this Cause is technically feasible... Supplemental Response: Admit."



persuaded that the interconnections sought by FBN would require the equipment Ameritech claims would be necessary to effect the interconnection. We find the testimony provided by FBN that the interconnection with NITCO is presently accomplished without the digital cross-connect Ameritech claims is necessary to be persuasive evidence that such equipment would not be necessary to effect a similar interconnection with FBN. We also find FBN's testimony that a spare OC-12 shelf exists and can be used for FBN's interconnection<sup>4</sup> more credible than Ameritech's claim that the only spare capacity available is dedicated to NITCO's growth, particularly in light of NITCO's testimony that its usage has decreased in the last two years. Further, we are persuaded by the argument that fiber capacity is increased by the addition of electronics rather than by laying additional fiber. On that basis, we find that even considering Ameritech's cost of laying fiber in RD-02, the costs of the interconnections sought in this proceeding are reasonable and, in no way, excessive or burdensome to Ameritech.

Moreover, even if we were to accept Ameritech's cost figures as burdensome or excessive, Ameritech still could not refuse the interconnection or require contribution from FBN. Ameritech must "bear the cost of providing those facilities" necessary to deliver traffic originating on its network to terminate at the top of FBN's network. *See AT&T Arbitration*, First Arbitration Order, November 20, 2000 at p. 28. The Commission previously rejected Ameritech's efforts to insert language into the Interconnect Agreement that would have allowed just such a result. Ameritech sought to require payment by the CLEC for "expensive" interconnections in the AT&T Arbitration – language virtually identical to that cited by Mr. Novack in his testimony and again at the hearing. In that proceeding, the Commission agreed with AT&T and deleted Ameritech's proposed language. *See AT&T Arbitration*, (Approved April 18, 2001), Issue 4 at page 5; *compare Ameritech Exhibit MN*, at page 29 of 36, TR. 38/8-13. Ameritech must provide the facilities to deliver its traffic to FBN and Ameritech cannot reject the request to interconnect or seek contribution from FBN on the basis that such interconnection would be "expensive" to Ameritech.

Ameritech also argues that FBN's proposal that traffic initially be one-way from Ameritech to FBN is "unfair" to Ameritech as it has no hope of recovering the costs of its interconnection with FBN through reciprocal compensation. The Interconnect Agreement between the parties and earlier Commission rulings make clear that this argument is meritless. We find no basis in the Interconnect Agreement or the Act to require a "parity of exchange" as Ameritech urges this Commission to do.

Under the Interconnect Agreement, Ameritech is responsible for delivering traffic to the top of FBN's network. AT&T witness Noorani explained how interconnections under the Agreement are to be handled under the Agreement:

As a result of the arbitration hearings in Indiana it was settled that each party had the financial obligation to deliver the traffic originated on its network to the top of the other party's network. Thus AT&T has the obligation for the transport of its originating traffic over one-way trunks to Ameritech Indiana's tandem switch and

---

<sup>4</sup> The Parties stipulated that there was one OC-12 shelf that was not equipped. *Report on Settlement Conference*, ¶ 7. Further, we find persuasive FBN's testimony that if FBN uses the spare OC-12 shelf, no "re-engineering" would

Ameritech Indiana has the obligation for the transport of traffic that originates on its network and terminates on AT&T's network to the AT&T switch in the LATA. In those LATAs where AT&T does not have a switch, AT&T designates a POI for Ameritech Indiana to deliver traffic to.

*AT&T Exhibit DMN-R, Q&A 9.* Ameritech has the obligation to deliver its traffic to FBN's network. Nothing in the Agreement, however, requires that such traffic be in parity. Moreover, nothing in the Agreement suggests that if the traffic is not in parity that the interconnection may be rejected. On the contrary, the Agreement contemplates one-way trunking and the Commission has already determined that one-way trunks are standard: "The decision to opt for two-way trunking in lieu of one-way trunking is left to the discretion of the requesting CLEC, and not the ILEC. Implicit in the discretion granted the CLEC is that one-way trunking is standard. Thus AT&T is within its rights as a CLEC to select one-way trunking." *First AT&T Arbitration Order*, at p. 24. Ameritech must provide FBN any technically feasible interconnection that has been provided to the ILEC "itself, its subsidiaries, its Affiliates or other persons." Issues of traffic parity and/or reciprocal compensation play no part in that determination.<sup>5</sup>

**C. The Mutually Agreeable Language in the Agreement Does Not Give Ameritech a Unilateral Veto.**

The final question to be resolved, then, is whether Section 3.8 of the Interconnect Agreement allows Ameritech to unilaterally veto FBN's interconnection request. We find that it does not.

FBN's Complaints in both RD-01 and RD-02 allege that sections 3.2.2 and 3.2.3 are applicable to both the RD-01 and RD-02 interconnections. Those provisions are substantially similar:

3.2.2 Interconnection shall be accomplished at any technically feasible point within the Parties' networks. As provided in Section 251(c)(2) of the Act, AT&T [FBN], *at its option*, may request Interconnection of its facilities and equipment to SBC-AMERITECH's network at any technically feasible point in SBC-AMERITECH's network, for a Telecommunications Service that SBC-AMERITECH offers to itself, its subsidiaries, its Affiliates or other persons.

\* \* \* \*

3.2.3 As provided in Section 251(c)(2) of the Act, AT&T [FBN], *at its option*, may request Interconnection of its facilities and equipment to SBC-AMERITECH's network at any technically feasible point in SBC-AMERITECH's network, including a mid-span meet arrangement, at any transmission rate for a Telecommunications Service that SBC-AMERITECH offers to itself, its subsidiaries, its Affiliates or other persons.

---

<sup>5</sup> Nor do we find a valid distinction in Ameritech's claims that FBN's customer is an Internet Service Provider. Ameritech has previously lost its bid to have such calls treated differently. See *AT&T Arbitration*, First Arbitration Order, November 20, 2002 at pp. 24-26.

(Emphasis added). FBN asserts that it may select any point and transmission rate of interconnection with Ameritech that has been offered to another carrier. In comparison, Ameritech contends that section 3.8.1 requires mutual agreement whenever a fiber meet is chosen by FBN:

3.8.1 Fiber Meet Interconnection between SBC-AMERITECH and AT&T [FBN] can occur at *any mutually agreeable* and technically feasible point between AT&T's [FBN's] premises and an SBC-AMERITECH Tandem or End Office within each LATA.

(Emphasis added).

Reconciliation of these seemingly conflicting provisions is central to reaching resolution of the issues in this proceeding. To do so, the Commission is guided by basic principles of contractual construction. In *First Federal Savings Bank of Indiana v. Key Markets, Inc.*, 559 N.E.2d 600, 604 (Ind. 1990), the Indiana Supreme Court provided an overview of those principles:

The law of contract construction by courts is well settled. It is the duty of courts to interpret a contract so as to ascertain the intent of the parties. It must accept an interpretation of the contract which harmonizes its provisions as opposed to one which causes the provisions to be conflicting. In interpreting a written contract the court will attempt to determine the intent of the parties at the time the contract was made as disclosed by the language used to express their rights and duties. If the contract is ambiguous or uncertain in its terms and if the meaning of the contract is to be determined by extrinsic evidence, its construction is a matter for the factfinder. Rules of contract construction and extrinsic evidence may be employed in giving effect to the parties' reasonable expectations. If the ambiguity arises because of the language used in the contract and not because of extrinsic facts then its construction is purely a question of law to be determined by the trial court. When a court finds a contract to be clear in its terms and the intentions of the parties apparent, the court will require the parties to perform consistently with the bargain they made.

\* \* \* \*

While courts are bound to enforce contracts where intentions of the parties are clearly stated therein, a different problem arises where a contract is ambiguous or uncertain in its terms. In such a case the intent of the parties must be determined by extrinsic evidence or by examination of all of the provisions of the entire contract to attempt to harmonize all of those provisions so that consistency may be found in the ambiguous provision with all other provisions.

*Id.*, 559 N.E.2d at 604 (citations omitted). In this instance, there appears to be a conflict between the language in sections 3.2.2 and 3.2.3 granting the CLEC unilateral discretion over the point

and transmission rate of interconnection, and the requirement of mutual agreement in section 3.8.1.

We must first attempt to harmonize these provisions in a way that gives meaning to both. This can be done. The plain language of the contract, when viewed as a whole, supports FBN's position that the Agreement grants it sole discretion over points of interconnection and transmission rates when it elects an interconnection that Ameritech has already provided to "itself, its subsidiaries, its Affiliates or other persons[ ]" while mutual agreement is required when a fiber meet is at a location where such an interconnection has not been offered. This view harmonizes the otherwise apparently contradictory language between the provisions. While technical concerns about fiber meet type and location would require agreement and coordination to build a fiber meet where one did not exist, no such concern can be raised when the fiber meet is already in place and in use. Ameritech's interpretation would effectively render the "at its option" language of sections 3.2.2 and 3.2.3 meaningless whenever fiber-optics are used in the existing interconnection, effectively giving it veto power over any fiber meet.

Further, even if the fiber meet did not currently exist, Ameritech could not use the "mutually agreeable" language as a unilateral veto of FBN's interconnection. We find that Section 3.8.1 was never intended to allow such a result. Mutual agreement by definition suggests reasonable accommodation of the parties – unlike provisions that grant unilateral authority such as the "at its option" language of sections 3.2.2 and 3.2.3. Ameritech's witness described the mutual agreement component of negotiation between it and NITCO: The "transport is usually connected at a meet point within close proximity of the Exchange Access Boundary ("EAB"). The EAB is the boundary line that serves as the demarcation point between the distinct geographical operating areas served by each ILEC. The precise location of the meet point is always subject to the mutual agreement of both ILECs." *Ameritech's Responsive Testimony* at p. 19. This suggests that the "mutually agreeable" language was intended to determine a precise location within a very small area (i.e. within close proximity to the EAB). The unrebutted testimony of FBN witness Ricca is that the Palmer location is approximately half way between the FBN switch and the Ameritech tandem. The "mutually agreeable" language could be invoked to suggest a mid-span fiber meet in a location within close proximity to Palmer, the mid-way point between the FBN switch and Ameritech tandem, if Ameritech asserts a more logical or more efficient location exists between the networks, but Ameritech has not done so here. Nor can the Commission imagine a more efficient or logical location than a mid-span meet location that already exists. While we would like to see reasonable accommodation by both parties, Ameritech offered no alternative location for the mid-span meet and we cannot allow Ameritech to use Section 3.8.1 of the Agreement as a unilateral veto power over FBN's interconnection requests.

Our interpretation of the Agreement not only harmonizes otherwise conflicting provisions, it is consistent with other evidence of record as well as our rulings in the proceeding in which the Agreement was arbitrated. AT&T witness Noorani's testimony concluding that mutual agreement is not required by the Agreement is entirely consistent with the interpretation of sections 3.2.2, 3.2.3, and 3.8 we have adopted, and is based on his experience in negotiating the specific provisions in question. See *AT&T Exhibit DMN*, Q&A 10 at page 6; *AT&T Exhibit DMN-R*, Q&A 5. In addition, we specifically rejected Ameritech's effort to insert language we previously rejected into

section 3.2.2 that would have required mutual agreement in the AT&T Arbitration proceeding. See *AT&T Arbitration*, (Approved April 18, 2001), Issue 4 at page 5.

**D. FBN Is Entitled to the Interconnections It Seeks.**

Based on our rejection of Ameritech's various "fairness" arguments and our interpretation of the Agreement between the Parties, we reach the following conclusions about Issues 1 and 2:

**Issue 1:** Does the Agreement require Ameritech Indiana to provide FBN a mid-span meet at the Palmer, Indiana location utilizing fiber connectivity, or does the Agreement require that use of fiber meet interconnection architecture be deployed only at locations and through methods mutually agreed to by the parties?

**Conclusion:** The Agreement requires Ameritech Indiana to provide FBN a mid-span meet at the Palmer, Indiana location utilizing fiber connectivity.

**Issue 2:** If the Agreement provides for the interconnection proposed by FBN under Issue 1, is Ameritech required to provide the hand-off at the mid-span meet at any transmission rate for a Telecommunications Service that SBC-Ameritech provides for itself, its subsidiaries, its Affiliates or other persons?

**Conclusion:** Yes.

We now must evaluate how our interpretation of the language of the Agreement impacts the specific interconnections requested by FBN. We will address the RD-02 Interconnection first as it presents a more straightforward application of the contractual language. In RD-02, FBN proposes to establish an OC-12 interconnection with Ameritech in Palmer, Indiana. Under FBN's RD-02 proposal, it would provide fiber optic cable from its switch in Hebron, Indiana to the POI in Palmer where Ameritech would provide a similar fiber connecting with Ameritech's Crown Point, Indiana tandem. The un rebutted testimony of FBN witness Ricca is that the Palmer location is approximately half way between the FBN switch and the Ameritech tandem, thus requiring each party to provide a roughly equal amount of the interconnection facilities. We have already concluded that the interconnection is technically feasible and that such an interconnection has been offered to NITCO at that location.

We accordingly conclude that the RD-02 Interconnection is contemplated by the Agreement, and find that Ameritech shall provide for such an interconnection by providing fiber optic interconnection facilities at the Palmer, Indiana meet point at its cost sufficient to accommodate the requested OC-12 interconnection. The Commission is mindful that Ameritech may need to provide for the construction of its half of the interconnection facilities, and therefore the Commission finds that the interconnection facilities we have required shall be made available within ninety (90) days of this Order rather than the fifteen days requested by FBN in its Complaint.

The RD-01 Interconnection employs the same principles as the RD-02 Interconnection and invokes the same provisions of the Agreement, but is somewhat complicated by the fact that FBN proposes to lease spare capacity on the interconnection facilities between Ameritech and NITCO to move traffic from the POI to its switch. It is clear to us that the RD-01 interconnection is technically feasible and is provided to another person within the meaning of section 3.2.2 and 3.2.3 of the Agreement. The only distinction is the use of the existing facilities to accomplish the meet. In this instance, FBN has elected to request interconnection at a different technically feasible point in Ameritech's network, but the same rationale applies. FBN has indicated it will pay NITCO a tariff rate for capacity to Palmer, and it is up to Ameritech to deliver its traffic to that location according to its own network engineering practices.

We are not persuaded that the existence of any other traffic over the Ameritech/NITCO interconnection facilities has any bearing on the issues in this proceeding. There is no evidence to suggest what portion, if any, of those facilities might be specifically dedicated to, for example, the provision of Extended Area Service or other purposes that might preclude their use for delivery of traffic to FBN as requested in this proceeding. Indeed, the evidence convinces us that far from being capacity-limited, these facilities are if anything underutilized. The uncontradicted evidence is that a spare, unused OC-12 shelf is available over the existing facility in addition to what appears to be substantial capacity to accommodate even NITCO's most optimistic growth.

We find that FBN's requested interconnection proposed in RD-01 should be implemented by Ameritech within fifteen days from the date that FBN has an Interconnection Agreement with NITCO that has been accepted under the terms and conditions of the Commission's December 19, 2001 Order in Cause No. 39983. We also find that the requirement under the Agreement that Ameritech deliver traffic originating on its network to the top of FBN's network is fully dispositive of Issue 3, and Ameritech may not charge FBN for facilities or transport necessary to deliver such traffic in accordance with the Agreement under either the RD-01 or RD-02 interconnection.<sup>6</sup>

**Issue 3:** Does the Agreement require FBN to pay Ameritech Indiana for transport within Ameritech Indiana's network for calls originating on Ameritech Indiana's network?

**Conclusion:** No.

#### **E. FBN's CTA, Operations and Relationship With NITCO.**

During the evidentiary hearing, Mr. Taylor described a transaction that took place after the grant of FBN's CTA in 1998 but before the initiation of these proceedings whereby the ownership of FBN was transferred to the current owners. In response to the request of the Presiding Officers, FBN submitted late-filed Exhibit 4 documenting that transaction. The evidentiary record supports the conclusion that NITCO and FBN are "affiliate interests" within

---

<sup>6</sup>Ameritech suggested that since this issue was not raised in FBN's Complaints that it was not properly before the Commission. We find, however, that FBN timely identified Issue 3 in its Report on Settlement Conference where the parties were required to stipulate to the facts and identify the issues in dispute according to the scheduling order issued in this proceeding.

the meaning of Ind. Code § 8-1-2-49(2) based on common ownership, and thus both are obligated to file contracts covered by the statute with the Commission. While FBN testified that no interconnection agreement has been finalized between NITCO and FBN, the Commission finds that such agreement should be filed with the Commission's General Counsel pursuant to Section 49 and subject to Commission approval consistent with our Order in Cause No. 39983 and under the Act.

We are concerned about the on-going negotiations of the Interconnect Agreement between NITCO and FBN. Ameritech argued that "FBN is ready, willing and able to pay a tariff rate for transport to its affiliate but, as demonstrated in the testimony of Dennis Ricca, when Ameritech Indiana suggested that FBN pay Ameritech Indiana's tariff rates, it was flatly refused." *Ameritech Indiana's Exceptions and Reply to Proposed Order of FBN-Indiana, Inc.* at p. 8. Mindful of Ameritech's argument that FBN failed to seek TELRIC rates from NITCO, the Commission cautions FBN that it expects any Interconnection Agreement between FBN and NITCO that is filed with the Commission to be the result of an arms-length negotiation.

We also express concern about the relationship between FBN and NITCO in light of FBN's testimony at hearing that it may serve NITCO customers in the future. The Commission has historically placed strict limitations on the territorial authority granted to CLECs that have ILEC affiliations. Here, however, the Commission was not provided the opportunity to do so. When the CTA was issued to FBN, the record reflected that FBN had no affiliate relationships with any ILEC. Soon thereafter, FBN's CTA was purchased by its current shareholders who are affiliated with the ILEC NITCO. Due to the timing of FBN's purchase, the Commission did not have the opportunity to address the affiliate concerns we raise now.

Separate from the affiliate concerns associated with FBN's CTA we expressed above, Ameritech also argued that FBN's proposal would violate the local calling scope of its CTA. Mr. Taylor testified in response to Commission questions that the numbering resources assigned to FBN for a particular rate center would be used exclusively to serve customers physically located in that rate center. On the basis of such testimony, the Commission expects the local calling scope associated with FBN customers to be identical with the ILEC serving the same rate centers.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:**

1. FBN-Indiana, Inc. shall file its affiliate agreement with NITCO pursuant to Ind. Code § 8-1-2-49 with the Commission's General Counsel within fifteen (15) days of the date of this Order. FBN shall also file the Interconnection Agreement between FBN and NITCO with the Commission for acceptance pursuant to this Commission's Order in Cause No. 39983.

2. Ameritech Indiana is ordered to provide interconnection to FBN-Indiana at an OC-12 rate in Palmer, Indiana as requested in Cause No. 42001-INT-01-RD-01 within fifteen (15) days from the date that FBN has an Interconnection Agreement with NITCO that has been accepted under the terms and conditions of the Commission's December 19, 2001 Order in Cause No. 39983 consistent with the findings in Paragraph 9.

3. Ameritech Indiana is ordered to provide interconnection to FBN-Indiana at an OC-12 rate in Palmer, Indiana as requested in Cause No. 42001-INT-01-RD-02 within ninety (90) days of this Order consistent with the findings in Paragraph 9.

4. Ameritech Indiana shall not charge FBN for facilities associated with or transport of traffic originating on Ameritech Indiana's network and terminating on FBN's network consistent with the Agreement and our findings in Paragraph 9.

5. This Order shall be effective on and after the date of its approval.

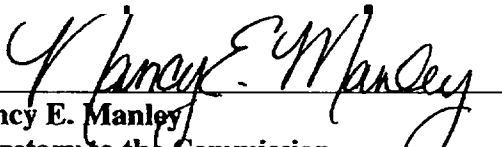
**McCARTY, RIPLEY, SWANSON-HULL AND ZIEGNER CONCUR;**

**HADLEY ABSENT:**

**APPROVED:**

**OCT 16 2002**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**

  
\_\_\_\_\_  
Nancy E. Manley  
Secretary of the Commission



**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

<b>IN THE MATTER OF THE PETITION OF INDIANA }</b>	
<b>BELL TELEPHONE COMPANY, INCORPORATED, }</b>	
<b>D/B/A AMERITECH INDIANA PURSUANT TO }</b>	
<b>I.C. 8-1-2-61 FOR A THREE-PHASE PROCESS }</b>	<b>CAUSE NO. 41657</b>
<b>FOR COMMISSION REVIEW OF VARIOUS }</b>	
<b>SUBMISSIONS OF AMERITECH INDIANA TO }</b>	
<b>SHOW COMPLIANCE WITH SECTION 271(c) OF }</b>	
<b>THE TELECOMMUNICATIONS ACT OF 1996 }</b>	

**AFFIDAVIT OF MARK TAYLOR**

Mark Taylor affirms under the penalties for perjury as follows:

1. I am President of F.B.N. Indiana, Inc. ("FBN"), a competitive local exchange carrier ("CLEC") authorized by the Indiana Utility Regulatory Commission ("IURC") to provide competitive local exchange services throughout the state of Indiana. My business address is 301 North Washington Street, Hebron, Indiana 46341. I am over the age of 18 years, and have personal knowledge of the facts set forth herein.
2. As president of FBN I have the responsibility for all aspects of its operation. For the last three years, and, in particular, since June, 2001, FBN has sought to interconnect with SBC Ameritech in Crown Point, Indiana. After an initial proposal was agreed to by the parties in the summer of 2001, FBN proposed a less expensive and more efficient method of interconnection for both parties in August, 2001. While the proposal was different than ones used by other CLECs in the state, it was nevertheless an interconnection that was clearly anticipated and described in the interconnect agreement FBN had with SBC. At the time it was proposed, the owner of FBN, Mr.. Rhys Mussman, and I specifically discussed that with the savings that Ameritech would realize, they would be likely to quickly agree to the changes in

architecture. My perception from the very first time that this option was considered at FBN was that it provided a win-win-win situation for Ameritech, FBN and NITCO. Ameritech and FBN would both save money in using and or leasing bandwidth that was already operational. NITCO would be able to sell capacity that would otherwise lie fallow and realize revenue that it otherwise would not. FBN proposed this architecture as one that would be win-win-win for all three parties to the transaction. I was surprised, then, at the turn of events that took place after this proposal was made.

3. Ameritech opposed the RD-01 interconnection vigorously, aggressively and stridently, showing no intention whatsoever of fulfilling the contractual obligations imposed by the plain terms of the Commission-approved Agreement and no intention of implementing the interconnection. SBC ignored its obligations under the Agreement and forced FBN to choose between getting into business under unfavorable conditions with excessively high costs or suffering total loss of revenues and irreversible lost opportunities while incurring enormous legal and consulting costs to compel SBC's compliance.

4. Ameritech attempted to load as much cost on FBN as possible. Despite the fact that this proposed method of interconnection was far less costly than the previously agreed upon architecture and despite the fact that no new construction of fiber facilities or terminating equipment would be required of Ameritech, SBC still attempted to impose onerous and burdensome costs on FBN. These costs would have been contrary to the interconnection agreement and would have resulted in expenditures far in excess of those required under the interconnection agreement. Several times during the course of the alleged negotiations in this process, SBC representatives either intimated or stated outright that if only FBN would accede to these SBC demands, then the interconnection could be provided quickly. When FBN refused to

agree, excuses were made. Suddenly, the quick interconnection could not be accomplished. Ameritech's attempts were transparent in their anti-competitive intent. It certainly appears to me that Ameritech was attempting to force potential competitors to incur unnecessary and unfair costs. From Ameritech's point of view, it was even better, because Ameritech would have been able to reap profits from those imposed costs by charging rates that exceed economic cost by substantial margins. These types of behavior, in a normally competitive market, would be considered shrewd. When a market is dominated, however, by a monopolist mandated by law to open its network to competition, such behavior is not considered shrewd, but must be considered antithetical to the very purpose of the market-opening law.

5. FBN is looking to compete for local business only if profits are reasonably probable. No one can guarantee that a company will be profitable, but it seems to me that it is precisely by acceding to this type of extortion that many of the CLECs currently in financial difficulty have exacerbated their financial woes. I am charged with earning a profit for my owners, as are all officers of for-profit companies. I will not be bullied into accepting more expensive interconnection facilities for a short-term gain of access to a market at the expense of long-term profitability.

6. If FBN is forced to file Rocket Dockets for every market it enters to force SBC to honor the plain language of its interconnection agreement, FBN will not be in business long. The pressures of a competitive market will not allow FBN to incur such costs and still provide services at a profit.

That concludes this affidavit.

I affirm under the penalties for perjury that the facts set forth in this Affidavit are true and correct to the best of my knowledge and belief, except for those facts stated upon belief, which facts I believe to be true..

Dated this 11<sup>th</sup> day of December, 2002.

---

Mark Taylor  
President  
FBN Indiana, Inc.

County of Porter     )  
                                  )ss  
State of Indiana     )

Subscribed and sworn before me this \_\_\_\_\_ day of December, 2002.

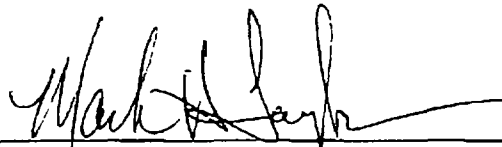
---

Notary Public

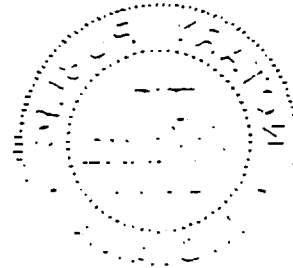
My Commission expires \_\_\_\_\_ .

I affirm under the penalties for perjury that the facts set forth in this Affidavit are true and correct to the best of my knowledge and belief, except for those facts stated upon belief, which facts I believe to be true..

Dated this 11<sup>th</sup> day of December, 2002.

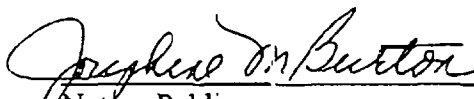
  
\_\_\_\_\_  
Mark Taylor  
President  
FBN Indiana, Inc.

\_\_\_\_\_  
JMB to sign  
WLC/x to kit  
\_\_\_\_\_



County of Porter     )  
                                  )ss  
State of Indiana     )

Subscribed and sworn before me this 11<sup>th</sup> day of December, 2002.

  
\_\_\_\_\_  
Notary Public

My Commission expires June 23, 2008.